

§ 1.555

38 CFR Ch. I (7–1–14 Edition)

the FOIA Officer determines that the requester has reasonably described the records sought in the FOIA request. If the FOIA Officer seeks additional clarification regarding the request and does not receive the requester's written response within thirty (30) calendar days of the date of its communication with the requester, he or she will conclude that the requester is no longer interested in pursuing the request and will close VA's files on the request.

(e) *Agreement to pay fees.* The time limit for processing the request will be tolled while any fee issue is unresolved. If the FOIA Officer anticipates that the fees for processing the request will exceed the amount that the requester has stated that he or she is willing to pay or will amount to more than \$25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify the requester. In such cases, the FOIA Officer may require the requester to agree in writing to pay the estimated fee. In addition, if the estimated fee amount exceeds \$250.00 or the requester previously has failed to pay a FOIA fee in a timely manner, the FOIA Officer may require the requester to pay the FOIA fee in advance, before beginning to process the FOIA request. If the FOIA Officer does not receive a written response within ten (10) business days of the date of the FOIA Officer's communication with the requester, the FOIA Officer will conclude that the requester is no longer interested in pursuing the request and will close the request. If the requester seeks a fee waiver under § 1.561, he or she nonetheless may state a willingness to pay a fee up to an identified amount in the event that the fee waiver is denied; this will allow the component to process the requester's FOIA request while considering the fee waiver request. If the requester is required to pay a fee in advance, and pays the fee, and if VA later determines that the requester overpaid or is entitled to a full or partial fee waiver, a refund will be made. (For more information on the collection of fees under the FOIA, see § 1.561.)

(f) The requester must meet all of the requirements of this section in order for the request to be perfected.

[76 FR 51893, Aug. 19, 2011]

§ 1.555 Responsibility for responding to requests.

(a) *General.* Except as stated in paragraphs (c) and (d) of this section, the FOIA Officer of the component that first receives a request for records is responsible for either processing the request or referring it to the designated FOIA Officer for the appropriate component. Offices that are within the component responsible for processing the FOIA request shall provide the component FOIA Officer all documents responsive to the request that are in their possession as of the date the search for responsive records begins.

(b) *Authority to grant or deny requests.* Each component shall designate a FOIA Officer who is responsible for making determinations pursuant to the FOIA.

(c) *Consultations and referrals.* When a component FOIA Officer determines that the component maintains responsive records that either originated with another component or agency, or which contain information provided by, or of substantial interest to, another component or agency, then the FOIA Officer shall either:

(1) Respond to the request, after consulting with the component or the agency that originated or has a substantial interest in the records involved; or

(2) Refer the responsibility for responding to the request or portion of the request to the component best able to determine whether to disclose the relevant records, or to the agency that created or initially acquired the record as long as that agency is subject to the FOIA. Ordinarily, the component or agency that created or initially acquired the record will be presumed to be best able to make the disclosure assessment. The referring component shall document the referral and maintain a copy of the records that it refers.

(d) *Classified information.* The FOIA Officer will refer requests for records containing classified information to the component or agency that classified the information for processing.

(e) *Notice of referral.* Whenever a FOIA Officer refers all or part of a request and responsibility for processing the

Department of Veterans Affairs

§ 1.556

request to another component or agency, the FOIA Officer will notify the requester in writing of the referral and provide the requester the name and contact information of the entity to which the request has been referred, after consulting with the entity to which the request is to be referred to ensure that the request is being referred to the correct entity. If only part of the request was referred, the FOIA Officer will inform the requester and identify the referred part at the time of the referral or in the final response.

[76 FR 51894, Aug. 19, 2011]

§ 1.556 Timing of responses to requests.

(a) *General.* Components ordinarily shall respond to requests according to their order of receipt and within the time frames established under the FOIA. If a request for expedited processing is granted in accordance with paragraph (d) of this section, such request will be processed prior to requests in either of the tracks described in paragraph (b) of this section.

(b) *Multitrack processing.* (1) VA will use two processing tracks in addressing a request for records: Simple and complex, based upon the amount of work and/or time needed to process the request, including consideration of the number of pages involved.

(2) The FOIA Officer shall advise the requester of the track into which the request has been placed and of the criteria of the faster track. The FOIA Officer will provide requesters in the slower track the opportunity to limit the scope of their requests in order to qualify for processing in the faster track. The FOIA Officer may contact the requester either by telephone or in writing, whichever the FOIA Officer determines is most efficient and expeditious; telephonic communication will be documented.

(c) *Unusual circumstances.* (1) FOIA Officers may encounter “unusual circumstances,” where it is not possible to meet the statutory time limits for processing the request. In such cases, the FOIA Officer will extend the twenty (20)-business day time limit for ten (10) more business days and notify the requester in writing of the unusual cir-

cumstances and of the date by which it expects to complete processing of the request. Where the extension is for more than ten (10) business days, the FOIA Officer will provide the requester with an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period with the FOIA Officer for processing the request or a modified request. Unusual circumstances consist of the following:

(i) The need to search for and collect the requested records from field facilities or other components other than the office processing the request;

(ii) The need to search for, collect and examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation with two or more components or another agency having a substantial interest in the subject matter of a request.

(2) Where the FOIA Officer reasonably believes that certain requests from the same requester, or a group of requesters acting in concert, actually constitute the same request that would otherwise satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, the FOIA Officer may aggregate those requests. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests will be processed out of the order in which they were received by the component responsible for processing the FOIA request and given expedited treatment when VA determines that:

(i) The failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) There is an urgency to inform the public concerning actual or alleged Federal government activity, if the request is made by a person primarily engaged in disseminating information;

(iii) In the discretion of the FOIA Officer, the request warrants such treatment; or

(iv) There is widespread and exceptional interest in which possible questions exist about the government's integrity which affect public confidence.